

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Denial of the Foster
Care License Application of Kevin
Downwind

RECOMMENDED ORDER
DISMISSING APPEAL

The above-entitled matter is pending before the undersigned Administrative Law Judge pursuant to a Notice of and Order for Hearing and Prehearing Conference dated February 13, 1995.

Catherine Margaret Meek, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, has appeared on behalf of the Minnesota Department of Human Services (Department). Kevin Downwind, the Applicant, 5733 Sander Drive, Minneapolis, Minnesota 55417-2812, has appeared on his own behalf.

On July 17, 1995, Administrative Law Judge Jon L. Lunde issued an Order cancelling the hearing scheduled for July 21, 1995, and requiring the Applicant to file answers to discovery within twenty days of the date of the Order. The Order advised the parties that failure to comply would leave the Applicant in default and the claims of the Department would be taken as established in the proceeding. The Applicant has not filed answers to discovery. The Applicant is in default within the meaning of Minn. Rules pt. 1400.6000 (1993).

NOW, THEREFORE, based upon all the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY RECOMMENDED:

That the Applicant's appeal be DISMISSED, the allegations in the Department's Notice of and Order for Hearing be taken as established, and that the Applicant's request for a foster care license be DENIED.

Dated this 13th of September, 1995

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

The Department seeks dismissal of the Applicant's appeal for his failure to answer discovery questions. Judge Lunde continued the hearing in this matter to allow discovery to be answered. The consequences of failing to answer the discovery was spelled out in Judge Lunde's Order. The Notice of and Order for Hearing alleged that Applicant used corporal punishment on a foster child, Applicant displayed sexually explicit posters in common areas of his home, and a November 19, 1990 Order for Protection identified Applicant as smashing the windows of a woman's car. These grounds are a sufficient basis for denying Applicant's request for a foster care license. Under Minn. Rules pt. 1400.6000, a party who fails to comply with an order of the administrative law judge is in default and may have the issues decided against that party without further evidence. Judge Lunde fully described the consequences of a default in his Order. Treating the Department's allegations as established, Appellant's request for a foster care license should be DENIED.

G.A.B.